

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KAREN L. HOFFMANN,	:	
Plaintiff,	:	CIVIL ACTION
	:	No. 20-6427
v.	:	
	:	
U.S. CUSTOMS AND	:	
BORDER	:	
PROTECTION,	:	
Defendant.	:	

ORDER

AND NOW, this 28th day of June, 2023, upon consideration of Defendant U.S. Customs and Border Protection's ("CBP's") Motion for Summary Judgment (ECF No. 35) and Plaintiff Karen L. Hoffman's Cross-Motion for Summary Judgment (ECF No. 37), in accordance with the Memorandum issued on this same date, it is **ORDERED** that both parties' motions are resolved as follows:

- Defendant's Motion for Summary Judgment is **DENIED WITHOUT PREJUDICE**.
- Plaintiff's Cross-Motion for Summary Judgment is **GRANTED IN PART** as to the adequacy of Defendant's search in two respects,

namely: the search terms CBP used in its search of email accounts in the cbp.dhs.gov domain; and the adequacy of CBP's search for responsive records from Eagle Pass Port Director Paul Del Rincon's and Assistant Port Director Pete Macias's mobile devices.

- Plaintiff's Cross-Motion for Summary Judgment is **RESOLVED AS MOOT** as to Defendant's "all files" averment; and Defendant's failure to produce Central American Caravans and Migrant Crisis Flow – Updates 28, 29, and 25-27.
- Plaintiff's Cross-Motion for Summary Judgment is **DENIED WITHOUT PREJUDICE** in all other respects.

In order to cure the inadequacies in its search for responsive records, it is further **ORDERED** that Defendant must take the following measures:

- Defendant must conduct a revised search of all email accounts in the cbp.dhs.gov domain using the search terms proposed in its Response to Plaintiff's Statement of Interest. ECF No. 49. If the revised search returns an overwhelming number of potentially responsive records, Defendant must meet and confer with Plaintiff about the use of a "refinement" search as described in Plaintiff's Statement of Interest (ECF No. 48) to filter the

larger search before it can claim that the search constitutes an undue burden.

- After the revised email search is concluded and all responsive records have been produced, Defendant must submit a sworn declaration (or declarations) from a declarant (or declarants) with personal knowledge describing in sufficient detail the revised email search.
- Defendant must conduct a revised search for responsive records from Eagle Pass Port Director Paul Del Rincon's and Assistant Port Director Pete Macias's active and inactive mobile devices. The records sought must include, but are not necessarily limited to: 1) WhatsApp messages and any other responsive WhatsApp data; 2) text messages; and 3) call logs.
- After this search is concluded, Defendant must submit a sworn declaration (or declarations) from a declarant (or declarants) who are qualified information technology or forensic data recovery specialists with personal knowledge of the search. These declarations must set out in detail the revised search for responsive records from Mr. Del Rincon's and Mr. Macias's active and inactive mobile devices.

- Defendant must also submit a sworn declaration (or declarations) from a declarant (or declarants) who are qualified information technology or forensic data recovery specialists with personal knowledge of the search setting out in detail the sequence of events leading to: 1) the wiping of the data on Mr. Del Rincon's inactive mobile device; 2) the loss of Mr. Macias's inactive mobile device; and 3) the efforts CBP has taken to recover any data that was lost from either device, or to verify that all data was transferred from the inactive mobile devices to the active mobile devices.

It is further **ORDERED** that, on or before **Friday, September 29, 2023**, the parties must submit a joint status report summarizing Defendant's progress toward complying with this Order and proposing a schedule for further proceedings in this case.

It is further **ORDERED** that, upon the conclusion of the revised search set out in this Memorandum and Order, and the production of all responsive records to Plaintiff, the parties shall submit to the Court a joint stipulation of dismissal; or, if necessary, a joint proposed briefing schedule for the filing of further motions for summary judgment.

s/ANITA B. BRODY, J.

ANITA B. BRODY, J.

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